IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NOS.741 TO 744 OF 2006
AND
C.M.P.NOS.6202 TO 6205 OF 2006

K.M.Mohammed Ali .. Petitioner in all the petitions

Vs.

P.M.Musthafa (deceased) rep. by L.Rs.
1.V.K.S.Md. Meera Ummal
2.M.M.Mohammed Dhulbikar Ali
3.M.M.Mohideen Seeni
4.M.M.Karunai Mohammed
5.M.M.Sithi Zeenath Muhavara
6.M.M.Muthu Ibrahim Umma
7.M.M.Mohammed Rayesa Parvin
8.M.M.Mohideen Kithur Ali
9.M.M.Mohammed Samin Araba
(Respondents 1 & 3 to 9 are given up from this CRP) .. Respondents in CRP.NPD.741 of 2006

V.A.Syed Mohammed Buhari .. Respondent in CRP.NPD.742 of 2006

A.P.M.Syed Mohammed Buhari Thangal (died)
1.M.A.S.Mohammed Sirajun Jaleela Bevi
2.B.T.Mohammed Thasleem Sulthan
3.B.T.Mohammed Hithayath Fahmitha
4.B.T.Mohammed Imran Khan
(Respondents 1 to 4 are brought on record as LRs of the deceased A.P.M.Syed Mohammed Buhari Thangal vide order, dt.13.8.2007 in CMP.No.2156 of 2007) .. Respondents in CRP.NPD.743 of 2006

M.Mohammed Iqbal .. Respondent in CRP.NPD.744 of 2006

These civil revision petitions have been preferred under Article 227 of the Constitution of India against the M.P.Sr.Nos.1443, 1444, 1445 and 1446 of 2006 in RCOP Nos.926, 925, 924 and 923 of 2001 respectively on the file of the XIV Judge, Court of Small Causes (Rent Controller), Chennai.

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For Petitioner : Mr.T.S.Rajamohan
in all the petitions
For Respondents: Mr.C.R.Suresh Kumar
in all the petitions
RR1,3 to 9 - given up in CRP.741/2006

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COMMON ORDER

This order shall govern the civil revision petitions, 4 in number, namely CRP Nos.741 to 744 of 2006.

2.The court heard the learned counsel on either side. These civil revision petitions have arisen from the rejection of four miscellaneous petitions filed in RCOP Nos.923 to 926 of 2001, which were originally pending on the file of the Rent Controller, XIV Judge, Court of Small Causes, Chennai. The revision petitioner herein is the landlord under whom the respondents in these civil revision petitions are the tenants in respect of the shop premises. Originally, the agreed rental was Rs.635/- Rs.690/- Rs.750/- and Rs.805/- respectively. The landlord filed the above said RCOPs for fixation of fair rent. The Rent Controller, on enquiry, fixed the fair rent at Rs.2226/- in the cases where the original agreed rental was Rs.635/-, Rs.690/- and Rs.805/- and in the other case where the agreed rent was Rs.750/-, the rental was fixed at Rs.2710/-. Aggrieved by the said order, eight appeals were preferred, four by the landlord and the other four by the tenants. All the eight appeals were dismissed by the appellate forum. Aggrieved over the same, the landlord brought forth CRP Nos.2320 to 2323 of 2004 and they came up for hearing before this court. After hearing the learned counsel on either side and looking into the materials available, the court was of the opinion that certain reports are to be called for from the Rent Controller, for which purpose Advocate Commissioner was to be appointed with the assistance of the competent surveyor and the qualified engineer in order to find out the building value, etc. and for that granting three months time to submit the report, the matter was remand directly to the Rent Controller.

3.Accordingly, the Advocate Commissioner was appointed by the Rent Controller and the Advocate Commissioner has also made her attempt to have the assistance of the Surveyor and also the qualified Engineer. At that juncture, the Commissioner could not proceed with the commission work due to the non co-operation on the side of the landlord and hence, the Advocate Commissioner has filed a report before the lower court, stating the difficulties experienced. Under these circumstances, the Rent Controller has dismissed the RCOPs for default. Four M.Ps. were filed for restoration of all four RCOPs, which were dismissed for default. The lower court has rejected all the M.Ps., stating that those petitions could not be entertained by the said forum and hence,

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these four civil revision petitions have arisen at the instance of the landlord.

4.The court heard the learned counsel on either side. The only contention put forth by the learned counsel for the landlord/revision petitioner is that the Advocate Commissioner did not execute the warrant properly; that though the remuneration of Rs.3000/- was made pursuant to the commission warrant issued, the Commissioner has demanded Rs.12,000/- stating that for each shop, Rs.3000/- must be paid. However, the Commissioner has received Rs.6000/- and apart from that, the Commissioner demanded Rs.12,000/- as remuneration for the Surveyor and Rs.8000/- as remuneration for the Engineer and thus, such a huge demand was made. Not even any order of court was also passed and under these circumstances, the Commissioner filed a memo, stating as if difficulty was felt in executing the warrant. The lower court, without considering the circumstances, dismissed all the RCOPs. All the M.Ps were filed for restoration of the same and all have been dismissed, stating that the original order was passed by the High Court and hence, the court had no jurisdiction to restore the same. Hence, these civil revision petitions have been brought forth.

5.In answer to the above, the learned counsel for the respondents would submit that when the order was passed by the lower court in the petition for restoration of the RCOPs, the landlord should have preferred an appeal and no question of preferring civil revision petition would arise and that too invoking Article 227 of the Constitution of India and hence, these civil revision petitions are not maintainable. Added further the learned counsel that a detailed memo was filed by the Advocate Commissioner, which would be clearly indicative of the fact that there was a thorough non co-operation on the part of the landlord and under these circumstances, the orders of the lower court have got to be sustained. In support of his contentions, the learned counsel has relied on a decision of this court reported in 2007 (3) CTC 822 (S.M.CHANDRASEKARAN VS. S.S.JAYAMANI AND OTHERS).

6.The court has paid its anxious consideration on the submissions made. The court is of the considered opinion that all the civil revision petitions have got to be ordered. It is not in controversy that originally, all the four RCOPs were filed in the year 2001 and fair rent was also fixed by the Rent Controller. Aggrieved over the same, both the parties have preferred eight appeals before the appellate forum. All of them were dismissed. Not satisfied the landlord took it by way of civil revision petitions before this court in CRP Nos.2320 to 2323 of 2004. They came for orders before this court. While disposing the same, this court has passed the order, which reads as follows:

> "11.In view of such circumstances, the above Civil Revision Petitions are allowed, with no order as to costs and the matters remanded to the concerned Rent Controller for disposal and the Rent Controller is directed to appoint a Commissioner to be assisted by a competent

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Surveyor from the Survey Department and another qualified engineer, so as to measure the demised premises and ascertain the physical features, site value, building value etc., as directed by the Rent Controller and submit a report within three months. However, the Rent Controller is hereby further directed to appoint Advocate Commissioner, without insisting upon any formal application therefor, so as to receive the reports and necessary plans within the time as directed above."

7.A reading of the order would clearly reveal that in order to fix the fair rent, it was necessary to call for the report and for which the Rent Controller should appoint the Advocate Commissioner to make the inspection of the property with the assistance of the qualified surveyor and the Engineer and the report should be filed within three months. Accordingly, when the matter reached the hands of the Rent Controller, the Advocate Commissioner was appointed. The Advocate Commissioner filed a memo, stating that she could not proceed with the commission work. Now, the memo filed by the Commissioner is also perused by the court.

8.At this juncture, the contention put forth by the learned counsel for the revision petitioner is that there was no question of non co-operation on the part of the landlord, but there was non execution of the warrant by the Commissioner properly as per the direction of this court. Apart from that, the period that was granted by this court was only three months, within which period the Commissioner could not file the report for the reasons stated in the memo. Hence, the Rent Controller should have asked for extension of time. But, instead, he has hastily dismissed all the RCOPs. At that juncture, four miscellaneous petitions were filed for restoration of the same. All M.Ps were not even numbered, but they were rejected, pointing out that they was originally a remand order by the High Court and hence, these petitions could not be entertained and all have been brought forth only by the Rent Controller not even seeking extension of time. All the contentions put forth by the learned counsel for the respondents and the decision relied on by him, as referred to above, cannot be countenanced at all. The decision could be applied in a case where the applications were taken on file and orders have been passed thereon. But, in the instant case, the petitions were not taken on file, which remained unnumbered and they were rejected on the ground that they cannot be entertained and only the High Court has got jurisdiction to entertain these petitions and under these circumstances, the landlord has come before this court.

9.At this juncture, the court is of the considered opinion that all the orders of the lower court, rejecting the petitions, have got to be set aside. All the petitions are entertained by this court. Considering the circumstances, the court is of the considered opinion that there is no question of sending back these petitions to the lower court again to be numbered and then, to be ordered. The court is of the considered opinion that instead of doing cumbersome process, the court feels it is a fit case where a

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direction could be directly issued to the Rent Controller to give six months time to the Commissioner and better it could appoint some other Commissioner, in view of the contentions put forth by the learned counsel for the petitioner as recorded above. Thus, the Commissioner can have the assistance of the qualified Surveyor and the Engineer in order to file the report as one found in the earlier order passed by this court as referred to above on the earlier occasion. The lower court is directed to restore the RCOPs to file immediately and proceed in order to file a report, as directed by this court on the earlier occasion, within a period of 6 months herefrom. Accordingly, these civil revision petitions are ordered. No costs. Consequently, the connected CMPs are closed.

Vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The XIV Judge,
Court of Small Causes,
(Rent Controller),
Chennai.

2. The Registrar,
Court of Small Causes, Chennai.

+ 3 ccs to Mr. C. R. Suresh Kumar, Advocate SR No. 50776, 50815, 50816
+ 4 ccs to Mr. T. S. Rajamohan, Advocate SR No. 50482 to 50485

KG(CO)
SR/30.1.2008

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OF 2006

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